

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No. 514 of 2003.

Judgement reserved on: 7.5.2007

Date of decision: 14.5.2007.

Heera Singh

..... Appellant.

Vs.

Gurmeet Singh & anr.

.... Respondents.

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Anil Chauhan, Advocate.

For the Respondents : Mr. Pankaj Sharma, vice Mr. Sandeep Kaushik, Advocate.

Kuldeep Singh, Judge.

The claimant petitioner is in appeal against the award dated 5.7.2003 passed by the Motor Accident Claims Tribunal (II), Sirmour District at Nahan in MAC Petition No. 160-N/2 of 2001, whereby learned Tribunal dismissed the claim petition.

2. The facts giving rise to the petition are that on 14.10.2001, Dhani Ram, aged 48 years, was walking along side the road when he was knocked down by crane/recovery vehicle No. HR-01-523 near Fauzi petrol pump, Paonta Sahib. In the accident, Dhani Ram received injuries. He was hospitalized, but he died. FIR No. 400 of 2001, dated 14.10.2001, was registered at Police Station, Paonta Sahib. The deceased was working as Peon in Government

Whether the reporters of the local papers may be allowed to see the Judgment?

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Senior Secondary School, Nagheta and was drawing Rs. 5500/- per month salary. The deceased was unmarried. The petitioner is the legal heir and younger brother of the deceased. The petitioner was fully dependant upon the deceased. The respondent No.1 was the owner and respondent No.2 driver of the offending vehicle and accident has taken place due to rash and negligent driving of the driver of the recovery vehicle at the time of accident. The petitioner has claimed Rs. 6,00,000/-, compensation on account of death of Dhani Ram.

3. The respondents No. 1 and 2 contested the petition and denied the accident. It has been submitted that a false case has been got registered against the respondents. No accident has taken place, as alleged in the petition. The petitioner was not depended on the deceased and is not entitled to compensation. The compensation claimed is excessive.

4. The learned Tribunal dismissed the petition by returning the finding that it is difficult to hold that Dhani Ram was hit and run over by the crane in question.

5. I have heard the learned counsel for the parties and have also gone through the record. The learned counsel for the appellant has submitted that Tribunal has not appreciated the material on record. The involvement of the crane in the accident resulting into death of Dhani Ram has been proved but Tribunal has erred in exonerating respondents. The petitioner is entitled to compensation, as claimed. The learned counsel for respondents has supported the impugned award.

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6. PW 1 Dr. S.M. Ali, proved the post mortem report Ex. PW 1/A of Dhani Ram. According to him, injuries sustained by Dhani Ram could be caused in a motor accident. PW 2 Surat Singh has stated that on 14.10.2001, at about 2.45 p.m., when he was going towards Bhup-pur near Fauzi Petrol Pump, deceased Dhani Ram was ahead of him about 15 to 20 meters. A crane came from behind and he saw Dhani Ram lying on the road and the crane stopped a few paces ahead of him. He took Dhani Ram to Pawar Clinic, where he died after sometime. The crane was being driven in high speed. In cross-examination, he has admitted that he did not see crane striking Dhani Ram. He lodged FIR. A suggestion has been given to him that he lodged the FIR incorrectly. PW 3 Bahadur Singh has proved FIR Ex. PW 3/A. PW 4 Rekha Tomar has proved salary certificate Ex. PW 4/A of Dhani Ram. PW 5 Hira Singh petitioner has stated that Dhani Ram was his elder brother. He has stated that he was not present on the spot at the time of accident. He has proved legal heir certificate Ex. PW 5/A. He has spent Rs. 10,000/- on the last rites of the deceased.

7. RW 1 Satnam Singh, driver of the vehicle, has stated that on 14.10.2001 he was driving crane No. HR-01-0523 from Paonta to Ladwa and crane was owned by Gurmeet Singh. He was stopped at Behral barrier at about 7.30 p.m. by the police on the ground that the crane has met with an accident at Badripur Chowk. He denied the accident. A criminal case was registered against him, in which he was acquitted vide judgement Ex. R-1. He was falsely implicated in the case. RW 2 Gurmeet Singh has stated that no

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accident took place with his crane. The police falsely involved his vehicle in the accident. Ex. R-2, is the copy of the statement of Surat Singh in criminal case.

8. In the petition, it has been alleged that the accident has taken place at about 2.35 p.m., on 14.10.2001. No doubt, in FIR, which was got registered by PW 2 Surat Singh, it has been mentioned that the crane struck a person, who was 15 meters ahead of him and that person fell down and when he saw that person, he found Dhani Ram there. The contents of FIR pales into insignificance when PW 2 author of the FIR, while in the witness box specifically stated that he had not seen crane striking Dhani Ram. Not only before the Tribunal the statement of Surat Singh was earlier recorded in the criminal case also, which has been placed on record, as Ex. R-2. In that statement also, Surat Singh has categorically stated that accident had not taken place in his presence. The statement of Surat Singh was thus recorded twice in the court, but on both occasions his consistent stand remained that he had not seen the accident. The statement made by Surat Singh in the court is in contradiction to the contents of FIR Ex. PW 3/A on material particulars regarding the fact whether Surat Singh has actually seen the accident. This contradiction has not been explained by Surat Singh when he appeared as PW 2 before the tribunal. There is no other evidence on record establishing that crane hit Dhani Ram and as a result of which he sustained injuries and ultimately died. It can be safely presumed that place of accident is a busy place in Paonta Sahib, but no independent evidence has been produced by the claimant to prove the fact that

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Dhani Ram died due to accident involving offending crane. In normal course some persons must have gathered at the place of accident. RW 1 Satnam Singh and RW 2 Gurmeet Singh have denied on oath involvement of crane in the accident. Therefore, on the basis of uncorroborated vague testimony of PW 2 Surat Singh, it is difficult to conclude that accident has taken place due to rash and negligent driving of the driver of the crane, as alleged by the claimant. In absence of other cogent evidence, liability cannot be fastened on respondent merely on the basis of FIR Ex. PW 3/A.

9. The learned Tribunal has rightly appreciated the material on record in returning the finding that Dhani Ram was not hit and run over by the crane, in question. The finding recorded by the Tribunal requires no interference.

10. In view of above discussion, appeal is dismissed with no orders as to costs.

May 14, 2007.
(Hem)

(Kuldip Singh)
Judge.